

Analysis of
063.58 impediments to
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1997

ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING

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EXECUTIVE SUMMARY

*“Treat all...alike. Give them all the same laws.
Give them an even chance to live and grow.”*

Chief Joseph

In the 1960s, the United States Congress passed sweeping civil rights legislation prohibiting discrimination in public accommodations, schools, employment, housing, and voting for reasons of color, race, religion or national origin. Title VIII of the Civil Rights Act, as amended by the Fair Housing Act of 1988, is known as the Fair Housing Act. The Act prohibits discrimination in housing based on race, color, religion, sex, national origin, familial status or disability. Montana law also includes age, marital status, and creed. People in groups covered by the Fair Housing Act are known as protected classes. The protection covers most housing transactions including sales, rentals, providing real estate services, and making mortgage loans.

The Analysis of Impediments to Fair Housing is required by the Department of Housing and Urban Development for states and entitlement communities receiving federal monies from the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Shelter Grant (ESG), and Housing Opportunities for Persons With Aids (HOPWA) programs.

The Analysis of Impediments identifies what barriers to fair housing exist in the state and charts a course to meet those challenges. The goal in evaluating the issues has been to seek a balanced, broad-based participation from many people involved in housing. This document is not meant to further the agenda of any person or organization, but to weave the views of many into a collective tool that can be used to help Montana achieve the goals of equal fair housing opportunity for all its citizens.

By carefully analyzing a range of material, five primary impediments to fair housing were found. Material analyzed includes lending data from the Home Mortgage Disclosure Act; media accounts; housing complaint records from the Montana Human Rights Commission, the Council for Concerned Citizens, and Montana Fair Housing; as well as a series of telephone interviews with people knowledgeable about housing. Impediments are defined as actions, omissions, or decisions that restrict, or have the effect of restricting, housing choice for the protected classes. The impediments identified through the study are:

- Being treated with different terms and conditions when seeking rental property;
- Encountering discriminatory advertising;
- Facing restrictive covenants in sale of property;
- Experiencing disparate treatment in rental housing; and
- Encountering institutional obstacles in lending for sales of property.

Impediments to fair housing exist in Montana, and they are faced by all protected classes, with varying degrees of frequency and severity. The Montana Department of Commerce carries the responsibility for certifying that HOME and CDBG grantees affirmatively further fair housing. The MDOC also is responsible for conducting the AI, taking actions to address the impediments, and monitoring the results. However, MDOC lacks the authority to solve these problems alone. The task of completely eliminating the impediments to fair housing belongs to all Montanans.

To facilitate Montana's collective responsibility, the Montana Department of Commerce will:

- Provide referral to the Human Rights Commission and, hereby, endorse the Commission's complaint-based system;
- Endorse a statewide dialogue between key parties in the fair housing arena, such as real estate groups, landlord and property management associations, fair housing advocates, and interested citizens;
- Provide information to organizations in Montana, such as realty groups, landlord associations, and the Montana Newspaper Publishers Association, about liabilities associated with discriminatory advertising practices in housing;
- Continue to provide fair housing education in MDOC programs, and inform individuals and relevant groups of fair housing education opportunities;
- Continue to consider the results or implications of data and various studies, such as the Home Mortgage Disclosure Act information, the Human Rights Commission complaint data base, and fair housing organizations' Fair Housing Initiative Program reports;
- Continue to monitor fair housing compliance in grantee projects; and
- Continue to authorize grantee administrative funds for HOME and CDBG grantees to conduct activities that affirmatively further fair housing.

INTRODUCTION

Montana receives funds from the U.S. Department of Housing and Urban Development (HUD) for its Community Development Block Grant (CDBG), Home Investment Partnership (HOME), and Emergency Shelter Grants (ESG) programs.

As part of the conditions for receiving these funds, jurisdictions must certify that they affirmatively further fair housing. HUD administrative rules state three required components for affirmatively furthering fair housing: conduct an analysis of impediments (AI), take action to eliminate the impediments, and maintain records of the process. HUD suggests that the AI be conducted as part of the Consolidated Planning cycle, which takes place every three to five years.

The State of Montana conducted an Analysis of Impediments in 1994, shortly after the requirement for the study was announced in *The Federal Register*. Montana was the first state in the nation to complete the study. In March of 1996, new requirements for the AI were published by HUD, and this current study seeks full compliance with HUD's 1996 guidelines.

What are impediments to fair housing?

Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin, which restrict housing choices or the availability of housing choice

OR

Any actions, omissions, or decisions which have the effect of restricting housing choices or the availability of housing choice on the basis of race, color, religion, sex, disability, familial status, or national origin.

The State of Montana extends protected status to its citizens based on creed, age, and marital status.

How the study was funded

This study was funded by the Local Government Assistance Division and the Housing Division of the Montana Department of Commerce.

Commitment to Fair Housing

The State of Montana certifies in its Consolidated Plan that it will affirmatively further fair housing in accordance with applicable statutes and the regulations governing the Consolidated Plan regulations.

The state recognizes that affirmatively furthering fair housing means it will conduct an analysis of impediments, take actions to mitigate or eliminate impediments identified through the analysis, and maintain records reflecting that analysis and actions in this regard.

Methodology

The AI is a comprehensive examination of existing information related to housing in the State of Montana. It includes quantitative analysis and qualitative research. Demographic information, media accounts, reviews of housing complaint data, both with the state's fair housing organizations and with the Montana Human Rights Commission, existing studies, and related reports were all studied. Information about individual mortgage applications from across the state was analyzed to determine any discriminatory patterns in loan denials. In addition, about 40 people familiar with housing issues from a variety of perspectives participated in a telephone survey. Fair housing representatives, disability advocates, investigators with the Human Rights Commission, state officials, and others were contacted for background information. The analysis is broken down into two basic components: primary research, which is the analysis of raw data; and secondary research, which is the review of existing studies.

Primary research

Analysis of Home Mortgage Disclosure Act Data The federal Home Mortgage Disclosure Act requires participating financial institutions to report race, sex, loan amount, and disposition of the loan application for all mortgage applicants. All individual loan application records for 1994 were tabulated and analyzed.

Telephone survey HUD suggests two alternatives to gather public testimony about perceived areas of housing discrimination for the AI. One method is to hold one or more fair housing forums, in which community members share knowledge about alleged discrimination or problem areas. The second alternative is a telephone survey, targeting individuals who are familiar with housing issues from a variety of perspectives. Montana chose to conduct a telephone survey.

Names of about 150 people were gathered from housing resource organizations, fair housing groups, real estate organizations, banking and insurance associations, and others. About 50 names were randomly selected to contact for the telephone survey. These people were contacted first by letter and then by telephone to set up an appointment to conduct the survey. About 75 percent of the people originally contacted participated in the survey. (A copy of the letter and attachments are included in the appendix of this document.) The box below contains the names of all people who were contacted by letter to participate in the survey.

EXHIBIT 1
INDIVIDUALS AND ORGANIZATIONS
ANALYSIS OF IMPEDIMENTS SURVEY

Pat Admire	Bozeman Bd. of Realtors	Joan Jonkell	Attorney
Toni Austad	Council for Concerned Citizens	Jack Keith	Blackfeet National Bank
Geoff Bayless	Fidelity Management	Susan Kunda	Flathead Co. Ombudsman
Roy Beall	City of Bozeman	Mari Laursen	Western MT Landlords Assn
Maria Beltran	Montana Legal Services	Rick Linafelper	MT. Landlords Assn.
Ernie Bighorn	Indian Dev. & Educ. Alliance	Terry Lobdell	Community First Bank
Julie Bornhoeft	Battered Women's Network	Pat Lockwood	Living Independently
Al Buhr	Valley Bank	Naomi Longfox	No. American Indian Alliance
Carolyn Brock	Anaconda Indian Alliance	Sheila Maddux	HUD-FHEO
Russ Brown	CHRB Projects Director	Mary McCue	MT Landlords Assn, atty
Rhonda Carpenter	Montana Housing Providers	Brian McCullough	MT Landlords Assn, Helena
Chuck Celania	First Security Bank	Joy McGrath	Mental Health Assn. of MT
Laura Dygert	AFL-CIO Women's Group	Margaret Morgan	MT Assn. of Realtors
Sue Fifield	Montana Fair Housing	Dennis Mullen	Eastern MT. Bd. of Realtors
Dave Fishbaugh	Habitat for Humanity	Craig Ostman	Norwest Bank
Kim Fisher	Native Action	Eldon Piper	Eastern MT Landlords Assn.
Mary Gallagher	Attorney, MT Advocacy	Machel Poier	NW MT Human Resources
Dave Gentry	Disabled advocate	Michael Regnier	Equal Access Consulting
Bruce Gobeo	Attorney	John Sampsel	MONAMI
Pam Gouse	Bitterroot Valley Bd. of Realtors	Diane Savasten	Havre Bd. of Realtors
Thomas Grau	Century Insurance Agency	Kathy Schulte	NW MT Assn. of Realtors
Danny Green	Montana Fair Housing	Gerald Sherman	First Interstate Bank
Wayne Haines	First National Bank	Karen Smith	Habitat for Humanity
Joanne Hale	Helena Housing Authority	Claudia Stephens	Montana Migrant Council
Pete Hansen	MT Landlords Assn.	Vinee Thompson	MT Landlords Assn., Havre
Mae Hassman	Missoula Co. Assn. of Realtors	Gene White	Century 21
David Henry	Montana People's Action	Charlie Yegen	Peter Yegen, Jr., Inc.
Linda Henry	Initiatives Project, CCC	Ziggy Ziegler	County Commissioner
Daphne Herling	CMCD		
Chris Hoiness	Hoiness LaBar Insurance		

Additional contacts were made in the course of the study for clarification or additional information from people knowledgeable in particular areas. These additional contacts included:

Dave Anderson	Office of the Inspector General	Jerry Keck	Human Rights Commission
Grace Berger	Board of Realty Regulation	Tim Kelly	Attorney
Brad Bernier	Rural Living	Anne MacIntyre	Human Rights Commission
Shirley Bethea	HUD Denver	Yvonne McLean	HUD Denver
Stephen Daly	Legislative Council	Fred Rivera	Department of Justice
ConstanceENZweiler	MT ADA Coordinator	Peggy Shippen	Human Rights Commission
Teresa Graham	Human Rights Commission	Gail Small	Native Action
Kathy Helland	Human Rights Commission	Margaret Tyndall	Federal Reserve Bank

Complaint data Complaint data was downloaded from the Montana Human Rights Commission's digital data base. This data was used to evaluate the frequency of the "basis," or the number of times certain protected classes filed grievances. Since the data did not include complaint specific issues, additional review of paper files was also conducted.

These 200 closed paper complaint files at the Human Rights Commission were studied to ascertain the specific issues involved in individual complaints. The complaint review was very useful in revealing ongoing areas of discrimination in the state, such as classified newspaper advertising with discriminatory wording or the area of sexual harassment in housing discrimination.

Secondary research Research included a comprehensive survey of newspaper accounts of housing discrimination, a review of previous studies related to fair housing, and Fair Housing Initiative Programs (FHIP) grant reports submitted to HUD by Montana's fair housing organizations.

In the newspaper review, newspaper indexes were examined for the Great Falls Tribune, the Billings Gazette, the Bozeman Daily Chronicle, the Independent Record (Helena), and the Missoulian (Missoula) for the past several years. Articles related to housing discrimination found in the index title search were then reviewed through the newspaper archives at the Montana Historical Society.

The newspaper search was fruitful in locating information about well publicized housing discrimination issues, particularly when a court decision was involved.

Outreach Face-to-face meetings were held with representatives from a variety of groups. These groups included: Human Rights Commission, Council for Concerned Citizens, Montana Fair Housing, Montana Bankers Association, Montana Association of Realtors, Montana Landlords Association, the Montana Independent Insurance Agents Association, and the Montana Independent Bankers Association.

The purpose of these meetings was to advise each organization of the AI, its purposes, goals and objectives. Also, the meetings were used to encourage each group to participate in the study. A request was made as to available complaint data, any known studies done previously, and suggestions for prospective interviewees for the telephone survey.

Analysis of Impediments Process

Two options for conducting the AI are described in HUD's Fair Housing Planning Guide published by the Department of Housing and Urban Development. One method is to form a task force or commission comprised of representatives of advocacy groups, the housing industry and fair housing. Another approach is to hire a contractor familiar with the jurisdiction and knowledgeable about fair housing issues. The State of Montana used Western Economic Services, an outside contractor, to conduct the AI.

BACKGROUND

Significant analysis and detail of economic, demographic, and housing data is presented in previous Consolidated Plan documents, such as the FY 95-99 Consolidated Plan, Volume I and the FFY 1996 Consolidated Plan update. The analysis is presented by small, sub-county geographic areas, by income, age, and sex cohort, and a variety of other descriptive parameters. However, a few key points are iterated below.

DEMOGRAPHIC DATA

Montana is generally a racially homogeneous state, with almost 93 percent of the population being white.¹ Native Americans make up about 6 percent of the population, with blacks comprising ¼ percent and Asian/Pacific Islanders and Other races each comprising about ½ percent. Table 1, at right, presents the 1990 Census count of population by race and by relevant area designation. Note that some data in the FY95-99 Consolidated Plan has been modified so that all "county" areas include only non-city and non-CDP areas; cities and CDPs have been subtracted from the county total data.

MONTANA'S INDIAN TRIBES

Native Americans make up the largest minority group in the State of Montana. There are 13 distinct tribal groups in the State of Montana. These groups make up the majority of the Indian population in the state. All but the first group listed are recognized tribes with Reservations. Following is a brief description of the tribal groups in the state:

1. The **Little Shell Chippewa Tribe** is without an established land base and is currently seeking federal recognition. Leaders assert a membership of 4,000 tribal members. The tribal office is located in Havre, Montana. However, the majority of tribal members are in Billings, Great Falls, and Missoula.

**TABLE 1
1990 CENSUS RACE DATA**

AREA NAME	WHITE	BLACK	ASIAN	NAT AMER	OTHER	TOTAL
Billings city	76945	317	318	2591	980	81151
Bozeman city	21871	74	485	343	107	22660
Great Falls city	51187	464	504	2631	301	55097
Helena city	23377	33	215	658	63	24346
Kalispell city	11582	17	85	211	22	11817
Missoula city	41010	133	619	1011	145	42918
Bozeman-West Riverside CDP	1821	0	0	33	0	1854
Evergreen CDP	3977	0	10	115	7	4109
Helena Valley Northeast COP	1705	7	0	49	14	1775
Helena Valley Northwest COP	1179	0	7	0	45	1231
Helena Valley Southeast COP	4411	0	14	106	70	4601
Helena Valley W. Central COP	6226	0	58	43	0	6327
Helena West Side CDP	1842	0	0	26	12	1880
Lookwood CDP	3697	20	23	149	78	3967
Lolo CDP	2713	8	0	25	0	2746
Malmstrom AFB COP	4998	500	257	91	91	5938
Orohard Homes COP	9935	13	163	189	30	10317
Sun Prairie COP	1330	0	0	26	0	1356
Beaverhead County	8281	16	27	73	27	8424
Big Horn County	4939	16	19	6310	53	11337
Biaha County	4040	2	5	2663	18	6728
Broadwater County	3271	0	10	28	8	3318
Carbon County	8001	5	2	49	23	8080
Carter County	1490	0	0	8	5	1503
Cascade County	14763	42	54	392	48	15300
Chouteau County	5218	0	24	207	5	5452
Custer County	11421	16	4	129	127	11697
Dawson County	2261	0	2	3	0	2266
Dawson County	9382	0	16	98	9	9506
Deer Lodge County	9929	21	32	251	45	10278
Fallon County	3080	0	3	14	6	3103
Fergus County	11907	5	18	142	11	12083
Flathead County	42253	38	189	529	182	43192
Gallatin County	27349	6	165	254	28	27803
Gallatin County	1581	0	4	4	0	1589
Glauber County	5270	6	27	6807	11	12121
Golden Valley County	899	0	5	3	5	912
Granite County	2522	0	8	18	0	2548
Hill County	14774	0	38	2728	118	17654
Jafferson County	7744	2	14	155	24	7933
Judith Basin County	2289	0	5	6	2	2292
Lake County	16468	8	21	4474	72	21041
Lewis and Clark County	7172	9	37	113	4	7335
Liberty County	2278	4	0	15	0	2295
Lincoln County	17021	3	64	343	50	17481
Madison County	5933	0	7	46	3	5989
McCone County	2247	2	0	27	0	2276
Meagher County	1789	0	2	20	8	1819
Mineral County	3222	4	21	68	0	3315
Missoula County	20428	21	222	544	37	21052
Missoula County	4058	0	14	21	15	4106
Park County	14279	86	51	79	119	14614
Petroleum County	513	0	0	8	0	519
Phillips County	4768	3	8	368	16	5163
Pondera County	5681	19	29	704	0	6433
Powder River County	2040	0	2	38	10	2090
Powell County	6238	0	14	288	82	6620
Prairie County	1365	0	2	10	6	1383
Ravalli County	24563	18	65	311	53	25010
Richland County	10490	7	10	137	72	10716
Roosevelt County	5604	13	28	5342	14	10989
Rosebud County	7579	12	37	2818	58	10505
Sanders County	8098	6	27	513	25	8669
Shannon County	4659	0	7	58	8	4732
Silver Bow County	33057	11	191	386	288	33941
Stillwater County	6352	11	23	125	25	6536
Sweet Grass County	3128	0	5	21	0	3154
Teton County	6175	0	13	83	0	6271
Toole County	4960	7	6	73	0	5046
Treasure County	856	0	0	8	10	874
Valley County	7438	0	23	770	8	8239
Wheatland County	2200	0	6	27	13	2246
Wibaux County	1183	0	3	5	0	1191
Yellowstone County	27433	43	122	571	132	28301
Montana	741340	2047	4256	47574	3848	799065

¹ Demographic and income information contained in this report is taken from the State of Montana FFY Consolidated Plan.

2. The **Chippewa-Cree Tribes** are situated on the 108,015 acre **Rocky Boy Indian Reservation** 25 miles south of Havre, Montana. There are 4,401 tribal members. Box Elder and Havre are adjacent off-reservation communities.
3. Browning is the major community within the **Blackfeet Indian Reservation** which borders Glacier National Park. The reservation is 1,462,640 acres with 13,960 tribal enrollment. The nearest towns are East Glacier and Cut Bank.
4. The **Assiniboine/Sioux Tribes** are situated in the northeast corner of the state. There are 9,867 enrolled members of the two tribes combined. Wolf Point, Poplar and Frazer are within the **Fort Peck Reservation**. Glasgow and Culbertson are the major off-reservation border communities.
5. **Crow Agency** is the seat of government for the **Crow Tribe**. The reservation is located in southeastern Montana and is best known for the national Little Big Horn battleground. There are 8,736 enrolled tribal members. Hardin is the largest town within the 2,235,092 acre reservation and is 45 miles east of Billings.
6. The **Northern Cheyenne Indian Reservation** is adjacent to the Crow Reservation. Lame Deer and Busby are the two communities on the reservation. Ashland is on the border of the reservation. There are 6,163 enrolled tribal members.
7. The **Gros Ventres/Assiniboine Tribes** share the **Fort Belknap Indian Reservation** in north central Montana. The tribes have a combined enrollment of 5,034. There are three tribal communities: Fort Belknap Agency, Hays, and Lodgepole. Harlem, Dodson, and Zortman are directly off the reservation.
8. The **Flathead Reservation** in Western Montana is home to the **Salish and Kootenai Tribes**. The reservation consists of 1,242,969 acres, and Polson, Ronan, Pablo, St. Ignatius, and Arlee are within the reservation. Kalispell is north of the reservation, and Missoula to the south.
9. The **Ahon-to-ways band of Ojibways** is also without an established land base. Their tribal headquarters, LoudThunder International, is located in Great Falls. Historically, their home was on Hill 57 just north of Great Falls. Tribal leader Robert Gopher states there are between 800 and 1,000 people included in the band. Many of the band members live in Great Falls, but statistics on other locations are not available.

Figure 1, on the following page, illustrates the location of the seven Indian reservations in the State of Montana.²

² Map on Montana's Indian Reservations obtained from the Montana State Library Natural Resource Information System: Maps of Montana at <http://nris.msl.mt.gov/gis/mtmaps.html>.

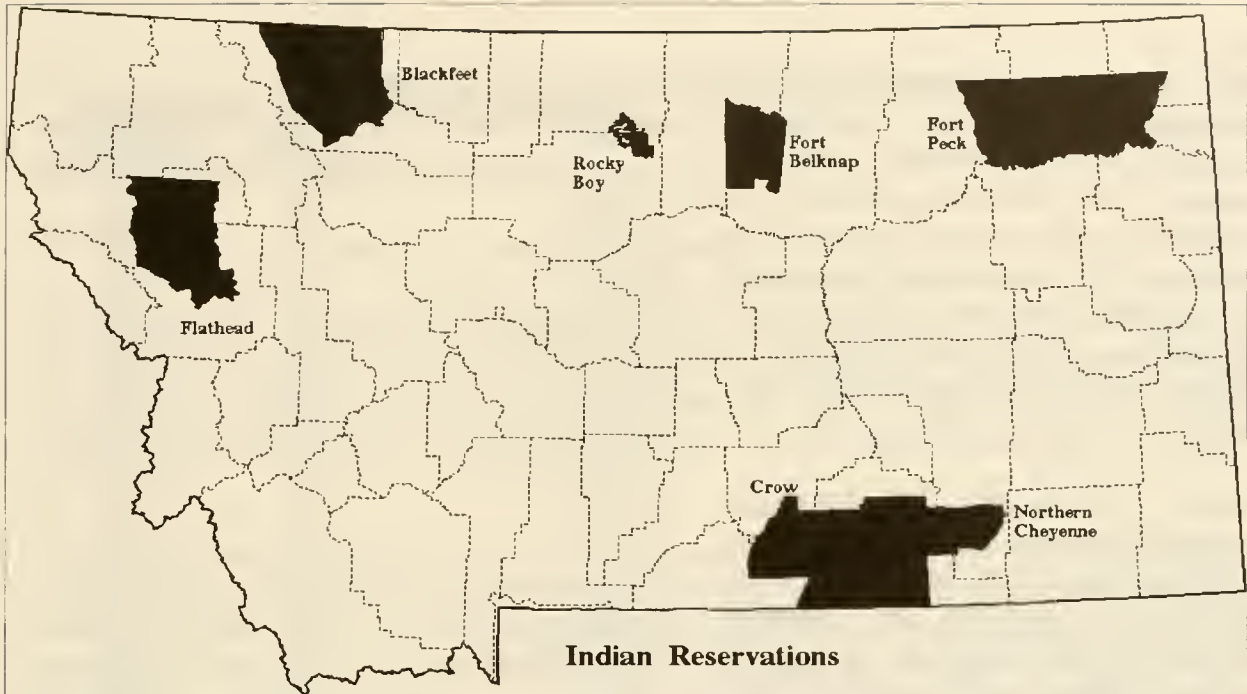


FIGURE 1
MONTANA'S INDIAN RESERVATIONS

GENDER

The percentage of males and females in Montana is closely balanced, with about 49.5 percent of the population male, and 50.5 percent female. The major cities tend to have slightly more females than males, and the rural areas tend to have more males.

INCOME

Within Montana, the 1990 per capita income varied widely. According to the 1990 Census, the statewide average annual income was only \$11,213. Per capita income varied from the lowest, Big Horn County at \$7,148, to the highest, Lewis and Clark County at \$13,256. This implies that significant variation in income may occur among households within the state. A more accurate way of inspecting the relative income between areas is to rank the percent of total household incomes below a particular threshold. This is better than just income because it accounts for households with additional wage earners. Data representing the percent of low income households in each area were computed and ranked.

Low income concentrations are designated as areas having a large percentage of households below the statewide low income threshold of \$22,435, which is 80 percent of the state median family income for a family of four. Census income data is reported by category; \$22,500 is used to approximate the low income threshold. Table 2, on the following page, presents all areas defined in this way and listed in descending order by percent. Those areas that fall within the low income criteria are listed above the dotted line, starting at Park County. In general, there appear to be very large blocks of the population in low-income households in Montana. Furthermore, as suggested by HUD, those areas having a disproportionate need are those with 10 percentage points above the average, which is 59.06 percent. Those areas above the line under Golden Valley are

areas having disproportionate need. Wheatland County has the highest percentage of households in the low income category, with over 65 percent of the households. Only one area, Helena Valley Northeast CDP, has less than 25 percent of its households in the low income category. Given these facts, large sections of Montana can be considered low-income areas.

Overall, 49 percent of Montana's households make less than 80 percent of the state's median family income in 1989. Seventy-five percent of Montana households made less than the national average median family income of about \$36,000 in 1989.

HOUSING

The 1990 Census estimated that Montana's housing stock totaled 361,155 units. Of the 361,155 dwelling units, 54,992 were vacant; 100,226 were rented, and another 205,938 were owner occupied.

Single-family detached homes make up about 66 percent of the housing stock; the share of the stock varies widely at the local level. About 21 percent of the statewide stock of homes were built prior to 1940, increasing the probability of lead-based paint hazards, especially for low income households. Other maintenance and structural deficiencies also tend to exist in these older structures, as does a higher incidence of vacancy. Sixty-six percent of the housing stock has two or three bedrooms.

TABLE 2
LOW INCOME CONCENTRATION - 1990 CENSUS

AREA NAME	LOW INCOME HOUSEHOLDS	PERCENT LOW INC HOUSEHOLD
Wheatland County	585	65.93%
Prairie County	367	64.96%
Musselshell County	1,083	64.93%
Carter County	381	64.91%
Garfield County	371	63.86%
Sanders County	2,128	62.13%
Bleine County	1,464	61.38%
Evergreen CDP	932	60.60%
Golden Valley County	192	60.19%
Meagher County	420	58.99%
Treasure County	202	58.72%
Big Horn County	1,988	58.60%
Roosevelt County	2,143	56.34%
Granite County	814	58.31%
Glacier County	2,203	58.19%
Bonner-West Riverside CDP	377	57.65%
Carbon County	1,882	67.18%
Bozeman city	4,959	56.84%
Petroleum County	120	56.60%
Lake County	4,431	56.16%
Wibaux County	263	55.96%
Sheridan County	1,059	55.91%
Kaliapell city	2,827	55.71%
McCone County	475	55.66%
Deer Lodge County	2,255	55.43%
Sweet Grass County	703	55.01%
Broadwater County	720	55.00%
Mineral County	713	64.39%
Lincoln County	3,661	64.36%
Ravalli County	5,169	53.80%
Beaverhead County	1,697	53.60%
Daniels County	493	63.47%
Fergus County	2,470	63.30%
Missoula city	9,419	63.02%
Custer County	2,435	52.85%
Powell County	1,177	52.43%
Silver Bow County	7,230	62.30%
Valley County	1,689	61.83%
Teton County	1,189	61.04%
Malmstrom AFB CDP	733	50.87%
Madison County	1,200	50.70%
Phillips County	982	50.54%
Powder River County	407	50.43%
Chouteau County	1,056	50.38%
Judith Basin County	467	49.84%
Orchard Homes CDP	2,094	49.63%
Perk County	2,783	49.44%
Great Falls city	11,034	48.72%
Stillwater County	1,254	48.62%
Pondera County	1,047	48.56%
Fallon County	557	48.46%
Dawson County	1,790	48.13%
Richland County	1,914	47.74%
Lewis and Clark County	1,327	46.81%
Helena West Side CDP	351	45.82%
Liberty County	351	45.07%
Toole County	853	44.78%
Billings city	14,780	44.44%
Hill County	2,803	43.72%
Helena city	4,537	43.64%
Flathead County	6,884	42.85%
Helena Valley Southeast CDP	557	41.71%
Gallatin County	4,313	41.54%
Cascade County	2,353	41.44%
Yellowstone County	4,232	41.41%
Rosebud County	1,431	41.17%
Lockwood CDP	557	40.54%
Lolo CDP	354	38.27%
Missoula County	2,777	37.25%

EVALUATION OF FAIR HOUSING PROFILE

Complaint and Compliance Review

The Department of Housing and Urban Development

The United States Department of Housing and Urban Development oversees, administers, and enforces fair housing law. However, in some states a “substantially, equivalent agency” may carry out the investigative and enforcement functions. Such is the case in the State of Montana where the state Human Rights Commission is charged with enforcing the Montana Human Rights Act.

The Rocky Mountain Regional office of the Department of Housing and Urban Development oversees housing, community development, and fair housing enforcement in six Western states. Of those six states, three have equivalent agencies to which HUD defers in matters of fair housing enforcement.³ In Montana, the state Human Rights Commission has investigative responsibilities, while HUD monitors the process.

HUD receives copies of housing complaints filed with the Montana Human Rights Commission and reviews them to determine if the federal agency has jurisdiction to file jointly with the state. Under certain circumstances, both the HRC and HUD will investigate complaints of housing discrimination in Montana. This generally involves properties that are receiving direct HUD funding and involve allegations of discrimination based on race, color, national origin or disability.

The Montana Human Rights Commission

The Montana Human Rights Commission (HRC) consists of five people appointed by the Governor. The commission enforces federal and state laws within the State of Montana that prohibit discrimination based on the protected classes. The commission employs a staff to investigate complaints of discrimination and implement Montana’s anti-discrimination policies.

The complaint process is not a hasty one, as investigators gather evidence and testimony to determine whether housing discrimination has occurred. Complaints are rarely fully resolved in less than three months, and can take much longer.

Complaint data

Complaints filed with the Human Rights Commission may have one of several outcomes: no cause, administrative closure, settlement, conciliation, conciliation failure, no jurisdiction, or complaint withdrawal with or without benefits (which may indicate a private settlement has been reached). Complaints may proceed to a hearing before the commission for resolution or may

³ Telephone conversation, Shirley Bethea, complaint intake analyst, HUD Denver, August 14, 1996.

ultimately be resolved in court. The total number of complaints filed from 1993 to 1996 are represented in the first row of Table 3 below.

TABLE 3
FAIR HOUSING COMPLAINTS FILED
& TOTAL INCIDENCES REPORTED
WITH MONTANA HUMAN RIGHTS COMMISSION
BY STATE FISCAL YEAR

YEAR	1993	1994	1995	1996	Total
Total Complaints on Record	150	67	153	167	537
Total Housing Incidence Outcomes					
No Cause	18	20	28	7	73
Administrative Closure	10	2	6	2	20
Settlement	31	16	38	15	100
Conciliation	8	2	0	0	10
Conciliation Failure	10	2	4	1	17
No Jurisdiction	2	0	1	0	3
Withdrawal w/o Benefits	11	3	5	9	28
Withdrawal w/ Benefits	5	3	4	2	14
Still Open	4	0	11	66	81
Recorded as Federal Law Violation					
No Cause	14	14	23	5	56
Administrative Closure	6	0	5	2	13
Settlement	25	13	36	13	87
Conciliation	7	2	0	0	9
Conciliation Failure	0	2	4	1	7
No Jurisdiction	0	0	0	0	0
Withdrawal w/o Benefits	8	2	4	3	17
Withdrawal w/ Benefits	3	3	2	2	10
Open	3	0	10	60	73
Recorded as State Law Violation					
No Cause	4	6	5	2	17
Administrative Closure	4	2	1	0	7
Settlement	6	3	2	2	13
Conciliation	1	0	0	0	1
Conciliation Failure	10	0	0	0	10
No Jurisdiction	2	0	1	0	3
Withdrawal w/o Benefits	3	1	1	6	11
Withdrawal w/ Benefits	2	0	2	0	4
Open	1	0	1	6	8
TOTAL INCIDENCES	99	48	97	102	346

However, the number of complaints exceeds the number of reported incidences due to the way in which complaint data is logged in the HRC tracking system. In general, data is entered as one record for each party to the complaint, as the outcome of the complaint may vary for each party to the complaint. Accounting for multiple records for one event (or incident), the remainder of Table 3 presents an estimate of the number of incidents, by type of outcome. The lower portion of the table separates the incidences into state or federal law violations.

Table 4, below evaluates the total incidence data introduced above by presenting it by protected class or “basis.” Note that “other” is equal to zero after 1993, but “marital status” and “family status” are equal to zero in 1993. This indicates a modification in the way the data was recorded starting in 1994.

TABLE 4
FAIR HOUSING INCIDENCES FILED
WITH MONTANA HUMAN RIGHTS COMMISSION
BY STATE FISCAL YEAR AND BASIS OF COMPLAINT

BASIS	1993	1994	1995	1996	TOTAL
Race/Color	16	9	23	14	62
Sex	18	5	5	28	56
Religion/Creed	2	3	0	2	7
Age	6	2	4	3	15
Disability	16	8	17	16	57
National Origin	3	3	0	0	6
Marital Status	0	1	4	9	14
Family Status	0	17	44	30	91
Other	38	0	0	0	38
TOTAL	99	48	97	102	346

The data from the HRC was further analyzed to determine the number of complaint records where evidence suggests “cause,” or a strong likelihood that discrimination did occur. This was done by adding together three types of outcomes: complaints in which the case was settled prior to determination of cause, complaints where cause was determined and the parties reconciled, and those where conciliation failed and the case was (or is) in litigation.

Such evaluation indicates that 127 incidences have had this type of outcome between July 1993 and June 1996, as seen in Table 5 on the following page.

Collapsing this data and ranking by frequency of protected class, familial status is the most frequent type of reported protected class violation, even though (due to the data’s recording method) there were zero familial status complaints in 1993. This data is presented in Table 6, also on the following page. It is recognized, however that not all alleged discriminatory incidences result in a complaint, and not all complaints are ultimately pursued by the complainant, irrespective of complaint validity. Consequently, values expressed here are likely to be somewhat conservative.

TABLE 5
FAIR HOUSING INCIDENCES WITH CLOSURE
MONTANA HUMAN RIGHTS COMMISSION
BY STATE FISCAL YEAR

YEAR	1993	1994	1995	1996	TOTAL
SETTLEMENT					
Race/Color	2	2	7	2	13
Sex	7	2	1	1	11
Religion/Creed	0	1	0	0	1
Age	1	0	2	1	4
Disability	7	1	5	4	17
National Origin	0	2	0	0	2
Marital Status	0	1	2	2	5
Family Status	0	7	21	5	33
Other	14	0	0	0	14
CONCILIATION					
Raca/Color	0	0	0	0	0
Sex	0	0	0	0	0
Religion/Creed	0	0	0	0	0
Age	2	0	0	0	2
Disability	1	0	0	0	1
National Origin	0	0	0	0	0
Marital Status	0	0	0	0	0
Family Status	0	2	0	0	2
Other	5	0	0	0	5
CONCILIATION FAILURE					
Race/Color	2	0	0	1	3
Sex	1	0	0	0	1
Religion/Creed	0	0	0	0	0
Age	0	0	0	0	0
Disability	1	1	0	0	2
National Origin	0	0	0	0	0
Marital Status	0	0	0	0	0
Family Status	0	1	4	0	5
Other	6	0	0	0	6
TOTAL	49	20	42	16	127

TABLE 6
FAIR HOUSING INCIDENCES 1993-1996
BY BASIS OF COMPLAINT

BASIS	NUMBER OF COMPLAINTS	PERCENTAGE OF TOTAL
Family Status	40	31.5
Disability	20	15.7
Race/color	16	12.6
Sex	12	9.4
Age	6	4.7
Marital Status	5	3.9
National Origin	2	1.6
Religion/Creed	1	.1
Other	25	19.7
TOTAL	127	100.00

Other compliance activities

The HRC has also applied for and received grants for special investigative projects. In 1994, the commission received a grant to investigate the use of covenants prohibiting the sale of properties to Native Americans. In the course of that research, investigators learned of three Kalispell area developments that had recorded covenants prohibiting children.

At the present time, investigators for the commission are involved in an 18-month study to ascertain whether there exists a pattern and practice of covenants restricting occupancy to “adults only” in four key housing markets in the state—the Gallatin Valley, Helena Valley, Flathead Valley, and Bitterroot Valley. A key area of research is classified newspaper advertising stating rental housing is for “adults only”. Since the project began in January, project staff have found discriminatory advertisements in 11 newspapers representing 18 housing providers in the targeted housing markets.

Suits filed by Department of Justice

The U.S. Department of Justice (DOJ) filed a suit in October 1992 against the owners of the Lee Apartments in Billings for allegedly engaging in a pattern of discrimination against Native Americans in violation of the federal Fair Housing Act. The case was the first in the nation filed by the DOJ alleging a pattern of housing discrimination against Native Americans.⁴

In June 1994, owners Richard E. Lee and Donald R. Lee, Sr. reached a settlement with the Justice Department. The men were ordered to pay \$65,000 in fines and modify their rental practices to avoid discriminatory practices.

Other suits filed

Montana has had a number of housing discrimination cases resolved in the court system.

An African-American man and his Caucasian wife initially filed complaints with the Missoula Police Department regarding verbal threats made by a tenant at the apartment complex where they all lived in June 1992. A copy of the complaint was delivered to the company that managed the apartments.

The tenant pleaded guilty to disorderly conduct for “using obscene language and shouting racial insults.” About two weeks later, the management company sent a memo to the couple threatening eviction for allegedly making loud noise and disruptive late night activity. The couple then filed a complaint with the Montana HRC naming both the property management company and the apartment owner as respondents. In 1993, the HRC and the complainant sued the tenant, the apartment owner and the property management company in District Court. The judge ordered the man who had made the comments to pay a variety of punitive and compensatory damages to the complainants and the HRC for his discriminatory actions, including a \$25,000 fine under the equal

⁴ *The Billings Gazette*, June 22, 1994.

housing provisions of the Montana Human Rights Act. The complaints against the owner and the management company were settled under unspecified terms.⁵

Another case which began in 1988 and was finally resolved in 1994 involved two black men who were denied an apartment in Billings by a woman who said her husband “would not let her rent to Negro men.” In a lengthy legal battle, the case was twice remanded back to District Court in Montana by the 9th U.S. Circuit Court of Appeals. In the initial lawsuit, U.S. District Judge Jack Shanstrom found the men had been discriminated against, and ordered the landlord to pay only legal fees, but nothing for emotional distress or punitive damages. In 1991, the 9th U.S. Circuit Court of Appeals told Shanstrom to reconsider the case and award Johnson and Walker fair compensation for their injuries, saying they had offered substantial and uncontradicted testimony of emotional distress. Shanstrom then awarded the men \$125 each, explaining that the landlord’s wife had been “very polite” and did not embarrass the two men in front of others.

The men appealed again, supported by the Montana HRC. The appeals court criticized Shanstrom and told him to award each man at least \$3,500 in damages, plus their legal costs.⁶

Statewide Fair Housing advocacy groups

Two groups in the State of Montana receive grant money from HUD to provide fair housing assistance in the form of education, outreach, and testing via the Fair Housing Initiatives Program (FHIP) grants. These are the Council for Concerned Citizens (CCC) with offices in Billings, Great Falls, Bozeman, and Havre, and the Missoula-based Montana Fair Housing. These two groups are considered “full-service” fair housing groups with the ability to perform complaint intake, investigations, and litigation support if necessary for all protections offered under the federal and state fair housing laws including lending, insurance, sales, and rentals.

Tables 7 and 8, on the following page, present complaint records from the Council for Concerned Citizens and Montana Fair Housing during 1995. The numbers reflected in these tables represent calls made to the organizations where an intake specialist determined there was reason to believe discrimination had occurred. The agencies then investigate through testing or interviews before deciding to take further action such as filing with the HRC.

The CCC began conducting random testing for the HRC, under contract to HUD, in Great Falls in the late 1980s. The commission was instrumental in forming groups to perform testing in Billings and Missoula. The Missoula group eventually became an independent fair housing organization known as Western Montana Fair Housing. The group recently changed its name to Montana Fair Housing and receives complaints from across the state, rather than only in western Montana.

⁵ *The Missoulian*, August 2, 1995

⁶ *The Billings Gazette*, January 12, 1994

**TABLE 7
COMPLAINTS RECEIVED
AT COUNCIL FOR CONCERNED CITIZENS
AUGUST 1994-AUGUST 1995**

COMPLAINT BASIS	GREAT FALLS	BILLINGS	HELENA	TOTAL
Familial status	24	25	31	80
National origin	22	24	25	71
Disability	11	20	30	61
Race	8	10	4	22
Sex	4	10	4	18
Age	6	2	9	17
Marital status	4	11	1	16
Religion	1	0	1	2
Creed	0	0	1	1
TOTAL	80	102	106	288

**TABLE 8
COMPLAINTS RECEIVED
AT MONTANA FAIR HOUSING
OCTOBER 1995 TO JUNE 1996**

COMPLAINT TYPE	
Handicap/Disability	115
Familial Status	80
Marital Status	33
National Origin	30
Race	15
Sex	12
Age	12
Religion	3
Harassment	2
Color	0
Creed	0
TOTAL	302

The fair housing groups have no official relationship with the HRC, but they do refer complaints and people to the commission. The HRC has greater authority under state and federal laws with the power to intake and adjudicate complaints.

Identification of Other Fair Housing Concerns

A significant amount of data was collected through both primary and secondary research methods. However, some of this information is inconclusive or does not fit neatly elsewhere in the analysis. Such issues are presented below.

Subtle forms of discrimination

The telephone survey found a perception that landlords increase rents when farm workers come into the area. For migrant farm workers, there is a perception that there are not enough rentals and those that are available are substandard.

Housing Availability vs. Affordability

There is an increasing problem with housing supply in the State of Montana as more people move to the state. A lack of affordable housing tends to disproportionately affect people in protected classes because they often are at the lower end of the economic scale.

People's incomes are not keeping up with the cost of housing. Increased numbers of retirees and tourists to the state create largely service-industry jobs, not family wage jobs. Housing costs are generally rising. These factors can make it easier to discriminate. "If you've got 50 people looking, you can take the cream of the crop," remarked one survey respondent. Low income people are limited in choice of affordable housing for economic reasons. (HUD defines affordable housing as housing where the person pays 30% of their income for housing.)

Landlord/tenant issues

- Housing discrimination complaints are sometimes filed after a landlord has served a tenant with an eviction notice. Landlords in Montana may give tenants a 30-day, no cause eviction notice or a 3-day eviction with cause, usually non-payment of rent.
- Property managers in the State of Montana must be licensed for individual properties with more than four units. To obtain a property management license, an individual must take 24 hours of classes, including three hours on fair housing law. Licensed property managers must also take six hours continuing education each year from courses that are approved by the State Board of Realty Regulation. An individual licensed as a real estate agent in the state can manage properties without obtaining an additional property manager's license, and those managing fewer than four units have no educational requirements.
- Montana Legal Services, with offices in several cities in the state, handles many landlord/tenant cases for low income people. Federal funding for legal aid was cut sharply this year, closing one office and reducing staff in other offices. In Billings, a nine-attorney office was reduced to three. With the fiscal and staff reductions, the agency will concentrate on landlord/tenant, social security and public benefit cases. They refer cases involving discrimination to the HRC.

Mental disabilities and treatment programs

A perceived problem area for people with mental disabilities is housing availability in proximity to treatment programs, allowing people to integrate into the community rather than live in institutions. There is a perception that people with mental disabilities should be able to live in their home communities, rather than in institutions removed from their families. Therefore, there may be some need to coordinate treatment services with housing, the survey found.

Though not an overt form of discrimination, it was reported that there is a perception that landlords would rather not rent to someone receiving social security because of a disability.

SUMMARY

The State of Montana has an active civil rights and fair housing community. The HRC has investigated nearly 350 complaints in the past four years. The fair housing advocacy organizations also have received complaints regarding housing. In this regard these organizations received 590 complaints in 1995. Most complaints received by the advocacy groups, deemed to have merit, are passed onto the HRC.

IMPEDIMENTS TO FAIR HOUSING CHOICE

FAIR HOUSING LAWS

The Fair Housing Act of 1968 prohibits discrimination in housing based on race, color, religion or national origin. Sex was added as a protected class in 1974. The Fair Housing Amendments Act of 1988 added familial status and people with disabilities to the list of protected groups. (A detailed chronological list of fair housing laws can be found in the appendix of this document).

The State of Montana enacted “substantially equivalent” civil rights legislation in the mid 1970s. The state law is closely aligned with the federal law, and also includes age, creed and marital status as protected classes. The legislation also established and defined the power of the state’s Human Rights Commission, which receives and investigates complaints of discrimination in employment, housing, public accommodations, financing and credit, education, and insurance.

Therefore, in Montana it is illegal to discriminate in housing to people based on the following:

Race ♦ Color ♦ National Origin Marital Status ♦ Family Status Religion ♦ Creed Disability ♦ Sex ♦ Age
--

Prohibited acts of housing discrimination cover a broad spectrum including:

- ▶ Refusal to sell or rent or otherwise deal with a person.
- ▶ Discriminating in the condition or terms of sale, rental, or occupancy.
- ▶ Falsely denying that housing is available.
- ▶ Discriminatory advertising.
- ▶ “Blockbusting”—causing persons to sell or rent by telling them that members of a minority group are moving into the area.
- ▶ Discrimination in financing of housing by a bank, savings and loan association, or other business.
- ▶ Denial of membership or participation in a brokerage, multiple listing, or other real estate services.
- ▶ Interference, coercion, threats or intimidation to keep a person from obtaining the full benefits of the Federal Fair Housing Laws and/or filing a complaint.

Financial institutions are subject to a number of fair lending laws designed to eliminate disparities in lending. They are audited regularly to assure compliance with the fair lending laws. These include the Home Mortgage Disclosure Act (HMDA), Equal Credit Opportunity Act, Fair Housing Act, and the Community Reinvestment Act.

The vast majority of complaints of housing discrimination stem from the rental market. Discrimination in this market is usually easier to recognize, too. A statement like “We don’t rent to people with children or dogs” is pretty straightforward.

Issues change with time, reflecting changes in society. For example, an area seeing more complaints in both housing and employment is that of sexual harassment. This change has taken

place since the hearings before the Senate Judiciary Committee concerning nomination of Supreme Court Justice Clarence Thomas, accused of sexual harassment.

Where racial bias may have been the primary area of discrimination in the earlier days of fair housing law, familial status and disability (added as a protected classes in 1988) also are rapidly growing areas of complaint activity. In Montana, as in many areas of the United States, the greatest numbers of complaints are based on familial status, race or color, and disability. However, the HRC has investigated complaints arising from every one of the protected classes over the last few years. Table 9 below ranks total HRC incidence data presented earlier from 1993 to 1996 and the percentage for each protected category.⁷

**TABLE 9
FAIR HOUSING INCIDENCES 1993-1996
BY PROTECTED CLASS**

BASIS	NUMBER OF COMPLAINTS	PERCENTAGE OF TOTAL
Family Status	91	26.3
Race/color	62	17.9
Disability	57	16.4
Sex	56	16.1
Age	15	4.3
Marital Status	14	4
Religion/Creed	7	2
National Origin	6	1.7
Other	38	10.9
TOTAL	346	100

After eliminating all those incidences that ended in a finding of no cause, administrative closure, no jurisdiction or complaint withdrawal, a total of 127 incidents is reached. The ranking of these differs from the total number of complaints filed. These 127 complaints are presented in Table 10, below, in order of complaint frequency.⁸ This data represents Montana's best estimate of the ranking of protected classes facing discriminatory practices in the housing markets. Again, the category "other" is a 1993 data management anomaly and likely to be comprised of family and marital status.

⁷ Total may not sum to 100 due to rounding.

⁸ Total percent may not add up to 100 percent, due to rounding.

**TABLE 10
FAIR HOUSING INCIDENCES WITH CLOSURE
1993-1996
BY PROTECTED CLASS**

BASIS	NUMBER OF COMPLAINTS	PERCENTAGE OF TOTAL
Family Status	40	31.5
Disability	20	15.7
Race/color	16	12.6
Sex	12	9.4
Age	6	4.7
Marital Status	5	3.9
National Origin	2	1.6
Religion/Creed	1	.1
Other	25	19.7
TOTAL	127	100.00

SALE OF HOUSING

Although most complaints of discrimination are in the area of housing rentals, discrimination in housing sales still exists today. However, it occurs in ways that are harder to ascertain than overt practices such as blockbusting⁹, which was once a fairly common practice in certain parts of the country. In Montana, two areas of discrimination related to housing sales are in the area of mortgage lending (see "Provision of Financial Services" later in this report) and restrictive covenants.

Restrictive covenants

Both secondary and primary research for this study determined that there has been some problem with the illegal use of restrictive covenants in the State of Montana. The Human Rights Commission in 1994, with a special grant from HUD, investigated illegal covenants in the state restricting the sale or transfer of property to Native Americans. The study found only one restrictive covenant related to race.

However, in the course of the study, researchers found a number of restrictive covenants forbidding housing sales to people with children under 17. The covenants were in place to create "adults only" developments. There are legitimate adults only developments for people 55 and

⁹ Blockbusting is the practice of inducing homeowners in a particular neighborhood to sell their homes quickly, often at a loss, by creating a fear to sell their homes quickly

older or 62 and older, with significant services for senior citizens. The developments with the restrictive covenants did not meet the guidelines for adults only housing.

In a well publicized incident in 1995, a housing development was approved, marketed, and advertised as adults only over a six-year period by a variety of groups presumably educated about fair housing law. This includes real estate lawyers, real estate agents, county planners, county commissioners, and a county recorder.

Housing covenants are recorded in land deeds in the county recorders' offices. As a result of the restrictive covenant research, the commission staff is currently working with the statewide Clerk and Recorders' Association to inform the public about illegal restrictions in real estate documents. The project staff has contacted all of the regional chairs of the association and asked them to pass on to their members the HRC request for each county's clerk and recorder to post a sign pertaining to illegally based restrictions.¹⁰

There is growing concern in the State of Montana about the use of restrictive covenants in ways that may have the effect of limiting affordable housing. For example, restrictive covenants may exclude modular or manufactured housing.

RENTAL OF HOUSING

Familial status

Although familial status was just given protected status in 1988, it is now the largest area of complaints of discrimination. Familial status means families with children. It is illegal to refuse to rent to a family in which one or more children under 18 live with a parent, to a person who has legal custody of the child or children, or to the designee of the parent or legal custodian with the parent or custodian's written permission. Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Survey results found there are landlords in the state who have no qualms about stating they want "no dogs or no kids." They're very up-front about it. Discrimination can take place by denying housing to people with children or by *limiting occupancy*, which can also be a policy issue.

There are policies landlords attempt to implement that have a disparate effect on people with children. For example, added charges for additional people, or segregating families with children in one part of the complex and adults only in another.

¹⁰ *Investigating Systemic Discrimination Against American Indians*, report by the Montana Human Rights Commission, December 1994.

Newspaper advertising

Research and survey results found that discriminatory wording in newspaper classified advertising has been frequently documented in Montana. In 1994, the HRC reached a conciliation agreement in a complaint filed by the Council for Concerned Citizens against a Billings area newspaper for discrimination based on familial status. The complaints rose out of the newspaper's publishing advertisements for rentals for adults only.

According to research, the complaints against the newspaper followed a careful study of discriminatory advertising by the Council for Concerned Citizens. The study found more than 40 discriminatory advertisements in a Great Falls newspaper between the period April 1992 and March 1993. On or about November 1993, CCC concluded that there were more than 10 discriminatory ads in the Billings area publication. Their study was driven by complaints from citizens.

The HRC continues to track advertising in a project aimed at discovering patterns and practices of discrimination in the state's four major housing markets—the Gallatin Valley, the Helena Valley, Flathead Valley, and Bitterroot Valley. The project looks at not only newspapers, but other advertising mediums such as telephone books. It is funded by an 18-month grant under the enforcement provisions of the Fair Housing Act.

Since the project began in January, project staff have found discriminatory advertisements in 11 newspapers representing 18 housing providers in the targeted housing markets. What actions may be taken, if any, will not be determined until a thorough consideration of all factors is completed. Project staff anticipates addressing the issue through informal means rather than formal enforcement procedures.

However, since the investigation is to determine whether a *pattern and practice* of discrimination exist, potential penalties are steep. A first violation of a pattern and practice of discrimination can result in a fine of up to \$50,000, and a second violation can result in a fine of up to \$100,000.

Women leaving shelters

Women leaving shelters, or victims of domestic violence, can experience landlords who are reluctant to rent out of fear of violence from the batterer. Women's shelters make sure these women know there are resources to help them if they believe they have been discriminated against.

Disability

The Fair Housing Amendments Act of 1988 amends Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) to prohibit discriminatory housing practices based on disability or familial status. The Act also established design and construction requirements related to accessibility for certain new multi-family residences.

Disability includes a physical or mental impairment which substantially limits a major life activity (i.e., caring for one's self, performing manual tasks, walking, seeing, hearing, speaking or learning). It includes people with AIDS and people with alcoholism, but does not include people who currently use or are addicted to illegal drugs.

It is illegal to discriminate against people because of their disabilities, and it is illegal not to allow a "reasonable accommodation" related to the disability. A "reasonable accommodation" can include allowing the disabled individual to make modifications to the dwelling to accommodate the disability such as building a ramp for a wheelchair. These modifications are financed by the disabled tenant. A reasonable accommodation can also include making accommodations in rules or policies, such as allowing a dog as a companion for a person.

Survey results indicate that failure to allow reasonable accommodations to support disabled persons, and resistance to rent to people who are on assistance because mental disabilities do exist.

Fair housing groups and advocacy organizations for the disabled have done a fair amount of outreach to people with mental disabilities, increasing their awareness that they belong to a protected class and that they are entitled to fair treatment in housing.

Race/Color/or National Origin

Color or race, refers to a persons racial or ethnic background, or in most cases people of minority races such as Blacks, Hispanics, Native Americans, Alaskan Natives, Asians, or Pacific Islanders. It is also illegal to discriminate because of someone's national origin, e.g. refusing to rent to all Irish people.

Native Americans

Complaints from people who believe they have been discriminated against because of their race, color or national origin, continues to be one of the largest areas of complaint in Montana. This is due in part, but not exclusively, to the large concentrated Native American population in Montana. According to one fair housing representative, the majority of complaints received at the agency's office are related to race, color and national origin, and the majority of those complaints are related to Native Americans.

Records at the HRC indicate race, national origin, and color is one of the largest areas of complaint. In the four-year period from 1993 to the present, the commission investigated 68 complaints related to race, national origin, and color. In the same period of time the agency evaluated 91 complaints related to familial status and 57 stemming from disability.

In a review of about 200 closed complaint records at the HRC, more than 77 percent of the complaints related to race, national origin and color concerned Native Americans.

Testers report that Native American rental applicants are often treated differently by landlords. In the application process, they may be given less information about available rentals and may have additional restrictions to follow such as no drinking, no parties, no overnight guests or no junk cars.

Discrimination in housing against Native Americans may be more widespread than evidenced by the number of complaints filed. A study conducted by the HRC point out that there are cultural factors that may deter Indians from confronting discrimination.¹¹

The study found that often Native Americans were reluctant to file complaints, citing distrust of the government and of the investigation process, a feeling that nothing would be done, and a lack of knowledge about remedies under the fair housing law. The commission staff talked with one woman who clearly explained some cultural reasons for not bringing a complaint:

The woman explained that she had been discriminated against in finding housing, but she chose not to pursue a complaint. Her reason was that if a person harmed her, he would be punished for his action. Her attitude was, "Let it pass, it will be taken care of in another way in the long run." "What goes around comes around," is another expression of the concept. This concept is tied to Indian animism, the belief that there are spirit forces in all of nature. A jural concept of the animistic religious belief is what has been called the doctrine of consequences. (Zion, J.W., "Indian Common Law in Saskatchewan," Government of Canada, 1985; "Searching for Indian Common Law," in Morse and Woodman, Ed., *Indigenous Law and the State*, 1988). Studies of Indian customary law demonstrate that in many Indian customary law systems certain offenses have supernatural punishment. (See, e.g. Van Valkenburg, "Navaho Common Law," I, II, III, Museum of Northern Arizona, 1934-1936). For every act, good or bad, supernatural consequences flow from it. Therefore many Indian people see it as unnecessary to challenge the discrimination they encounter.¹²

On the other hand, more than 70 percent of these complaints ended in a finding of lack of reasonable cause. This protected class has the highest percentage of complaints that end in a finding of no reasonable cause. This implies the potential for several conditions to exist: lack of cultural tolerance and understanding, misuse of the complaint system in landlord/tenant disputes, or both.

However, Native Americans are not the only victims of alleged discrimination based on race, color, or national origin. Other racially motivated cases are on record; some are mentioned earlier in this report.

¹¹ *Private Fair Housing Enforcement Focusing on Indians*, Montana Human Rights Commission, Final Report, Fair Housing Assistance Program, January 1989

¹² *Ibid*

Sex

Sex was added as a protected class in the 1970s. It is illegal to discriminate against a person because of their sex. Montana also includes marital status as a protected class, and the two areas are often cited in the same discrimination complaint, e.g., a single mother.

Women are not the only victims of sexual discrimination. In one university town, a single father with two boys was denied the opportunity to apply for three-bedroom family housing administered by the school. The school printed and distributed written policies stating preferences for married couples in family housing for students. The man filed a complaint based on sex and marital status. As a result of the complaint filed with the HRC, the Montana Commissioner of Higher Education agreed to change the policy regarding occupancy limits at family housing.

Sexual Harassment

A growing and related area of housing discrimination based on sex is that of sexual harassment. Survey responses and complaint research indicate that more people are coming forward with complaints of sexual harassment in housing, as well as in employment. Harassment by a housing provider, whether based on sex, race or disability, is considered an impediment to the "peaceful enjoyment of one's home."

Sexual harassment in housing takes place when a housing provider makes suggestive remarks about a tenant's body, dress, manner or walking; makes unwanted physical contact through touching, rubbing, or grabbing; asks for sex in exchange for something such as reduced rent or needed repairs; uses coercion with sexual activity by threat or punishment, such as threats of eviction if sexual advances are refused; or uses punishment upon rejection of sexual overtures.¹³

In general, sexual harassment occurs after a person has moved into housing or when the tenant is "within the power" of the housing provider. Sexual harassment cases are difficult to investigate. There usually aren't witnesses around when harassment takes place. It also is difficult to test a housing provider suspected of sexual harassment for the same reasons. Most complaints at the HRC concern men harassing women, but there are also complaints of women harassing men and men harassing men in a sexual manner.

¹³ *Violence and Intimidation in Housing, A Resource for Fair Housing Groups*, prepared by the Montana Human Rights Network, 1994.

PROVISION OF BROKERAGE SERVICES

Licensing procedures for real estate agents in Montana

The Board of Realty Regulation in Helena is the licensing authority for real estate professionals in Montana. To apply for a real estate license, an individual must have a high school diploma, and provide a credit report and employment history. Before taking the real estate examination, an applicant must complete 60 hours of classes. Continuing education is required of all licensed real estate agents. The Board of Realty Regulation added fair housing as a mandatory topic for continuing education in 1996.

Real estate agents may join local Realtor boards, which are trade associations that provide support, marketing, and educational services for its members. Members of Realtor boards agree to subscribe to a code of ethics. Local boards are members of the Montana Association of Realtors, which in turn is a member of the National Association of Realtors. Membership in the local board includes membership in the state and national associations.

In 1968, the National Association of Realtors and the HUD reached an agreement to comply with and enforce fair housing laws. As members of the national association, local Realtor boards are a party to the Voluntary Affirmative Marketing Agreement, or VAMA as it is commonly known.

Local boards provide materials to members to aid in their compliance with VAMA including all materials such as posters, logos, manuals, and pamphlets for customers. The board itself must comply by providing education to both members and others.

Presence of restrictive covenants

In the incident described above (“*Familial status, Adults only/no kids*”) regarding the use of illegal restrictive covenants, more than 20 real estate professionals were the subject of complaint filings by the HRC for “engaging in a pattern and practice of discrimination on the basis of familial status and age.” One issue in the complaints was a description of the properties on the Multiple Listing Service as “adults only.”

PROVISION OF FINANCIAL ASSISTANCE FOR DWELLINGS

Overt discrimination in mortgage lending is rarely seen today. Discrimination is more likely to be subtle, reflected in the failure to market loan products to potential minority customers and the failure of lenders to hire and promote staff from racial and ethnic minority groups.¹⁴

All banks in the United States are examined regularly for compliance with federal laws related to consumer compliance and fair lending. The frequency of the examination is dependent upon the past record of the financial institution; a bank with an outstanding record may be examined once

¹⁴ *Closing the Gap: A Guide to Equal Opportunity Lending*, The Federal Reserve Bank of Boston, April 1993

every two years, while a bank with a substandard or poor record may be looked at every six months.¹⁵ Banks are subject to the fair lending laws outlined below.

FAIR LENDING LAWS

The **Home Mortgage Disclosure Act** was enacted by Congress in 1975 and amended from 1988 to 1991, the Act is designed to provide the public with loan data that can be used to determine whether financial institutions are serving the housing credit needs of their communities and to assist in identifying possible discriminatory lending patterns.

Congress enacted the **Equal Credit Opportunity Act** in 1974 to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, age, receipt of public assistance funds, or the exercise of any right under the Consumer Credit Protection Act. The Act prohibits creditor practices that discriminate on the basis of any of these factors.

The **Fair Housing Act of 1968** prohibits discrimination in the sale or rental of a dwelling on the basis of race, color, religion, handicap, sex, familial status, or national origin. Under the Fair Housing Act, it is unlawful for any person who engages in the business of making or purchasing residential real estate loans, or in the selling, brokering, or appraising or residential real property, to discriminate against any of the protected classes.

The **Community Reinvestment Act** (CRA) was enacted in 1977 to require each federal financial supervisory agency to encourage financial institutions to help meet the needs of their service areas including low- and moderate-income neighborhoods. The four federal supervisory agencies are the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

The **Americans with Disabilities Act** (ADA) of 1990 bans discrimination against people with disabilities in the provision of goods and services, including credit services.

Detailed information about individual banks is available. All banking institutions in the United States fall under one of four federal regulatory agencies: the Office of the Comptroller of the Currency, the Federal Reserve system, the Office of Thrift Supervision, or the Federal Deposit Insurance Corp. Some specific loan analysis was conducted for this study.

There is no central agency within the State of Montana that receives reports from the banking regulatory agencies about compliance with fair lending laws. Reports are available from the regulatory agencies themselves or at the individual banks. The reports are public information.

¹⁵ Telephone conversation September 24, 1996 with , Margaret Tyndall, community affairs, the Federal Reserve Bank of Minneapolis

Banking activities in Montana

Community Reinvestment Act data from banks in seven Montana communities on or near Indian reservations was collected for the HRC report *Investigating Systemic Discrimination Against American Indians*. That research found that some of the banks had an “outstanding” status in their most recent CRA evaluation and many had “satisfactory” status.

However, some financial institutions in Montana have had a few problems related to discrimination in lending over the past few years. These involve complaints of redlining¹⁶ or an unsatisfactory CRA statement. All of these problems occurred on or near one of the state’s Indian reservations.

In one well publicized case, a Native American advocacy group successfully challenged and blocked the merger of two banks. Native Action, based in Lame Deer on the Northern Cheyenne Reservation, originally protested the merger between First Interstate BancSystem of Montana and a bank in a neighboring state in January 1990. The group filed a protest under Community Reinvestment Act, faulting the lending practices of the First Interstate Bank of Colstrip, a branch of the Montana banking company located 15 miles north of the Northern Cheyenne Reservation. The complaint charged that the banking company had not made loans to Indians and had even redrawn its service area to exclude the reservation.

Nearly two years later in October 1991, the Federal Reserve Board rejected the merger application solely on the basis of the bank’s failure to satisfy requirements of the Community Reinvestment Act.¹⁷ It was the first time a merger was denied on the basis of the CRA requirements.

In September 1992, the First Interstate Bank entered into an agreement with Native Action to increase its lending on the Northern Cheyenne Reservation to provide at least \$4,000,000 in loans on the reservation over a period of five years.

There are some institutional obstacles for banks lending money on Indian reservations. The greatest difficulty is the perception that banks cannot foreclose loans on Indian reservations because the land is in trust status. Reasons cited by bankers as obstacles to lending on reservations included:

- ▶ Lack of trust in the ability to collect on a loan in tribal court
- ▶ Difficulty obtaining adequate title insurance
- ▶ Inability to sell home loans on the secondary market
- ▶ Sovereign immunity of tribal governments

In the past couple of years banks in Montana appear to be working proactively to serve the needs of Native Americans. A fair lending committee comprised of representatives from about 15 banks

¹⁶ The systematic refusal by some financial institutions or insurance companies to issue mortgage loans or insurance on property in certain neighborhoods or areas.

¹⁷ American Banker newspaper, October 10, 1991

is working with the legal department at the University of Montana to develop uniform commercial codes for all the reservations to use in business transactions. Representatives of all the state's Indian tribes have been invited to participate in the process. Cooperating banks are hopeful that their work will result in a set of uniform codes that each tribe can adopt to facilitate business dealings such as mortgage lending.

HUD Section 184 Indian Housing Program

One new program that allows banks to make guaranteed loans on tribal lands is the HUD Section 184 Indian Housing Program. The Montana Board of Housing set aside \$1,000,000 in recycled mortgage funds to provide the permanent financing for qualifying lower income individuals for single family homes located on trust land on an Indian Reservation that are guaranteed by HUD through Section 184 for Native Americans.

An Indian who will occupy the property as a principal home owner and has met certain credit and underwriting standards is an eligible borrower. There are income limits. An Indian Housing Authority is an eligible applicant as well. IHAs may borrow funds for the development of single family homes that may be subsequently sold to eligible borrowers.

Home Mortgage Disclosure Act data analysis

Data from the Home Mortgage Disclosure Act (HMDA) for 1994 was collected and analyzed for this study. This data includes all home mortgage loan activities filed with participating commercial lenders in the Montana. Lenders in Montana's two metropolitan statistical areas reported loan activity by census tract. The remainder of the state was reported by county, and included sex and race of applicant, amount of loan, disposition of each loan application, and denial reason for all denied loans. However, the data is considered the 'raw' loan account record and some individual entries may contain errors or omissions.

As seen in the Table 11, there were 16,918 loan applications in 1994, with an approximate value of over \$940 million. The loans were either conventional methods, through the FHA, the Veterans Administration, or through what was then known as the Farmers Home Administration, and is now known as Rural Economic Development.¹⁸ The average loan application was for \$55,620 dollars.

¹⁸ For the purposes of this analysis, the FmHA label designated in the HMDA data will be retained.

TABLE 11
MONTANA HOME MORTGAGE DISCLOSURE ACT DATA
HOME MORTGAGE APPLICATIONS IN 1994

LOAN APPLICATION TYPE	TOTAL LOAN VALUE (\$1,000)	TOTAL APPLICATIONS	AVERAGE LOAN SIZE (\$1,000)
Conventional	637,925	11,974	53.28
FHA	211,692	3,716	56.97
VA	91,199	1,226	74.39
FmHA	124	2	62.00
TOTAL	940,940	16,918	55.62

A number of these loans pertained to non-owner occupied or multifamily properties. After deleting these records, a total of 8,306 single family-owner occupied loan applications were handled by the participating banking entities. These had a value of about \$544 million and averaged about \$65,510, as noted in Table 12.

TABLE 12
MONTANA HOME MORTGAGE DISCLOSURE ACT DATA
SINGLE FAMILY OWNER OCCUPIED HOME LOAN APPLICATIONS, IN 1994

LOAN APPLICATION TYPE	TOTAL LOAN VALUE (\$1,000)	TOTAL APPLICATIONS	AVERAGE LOAN SIZE (\$1,000)
Conventional	337,683	5,245	64.38
FHA	143,704	2,255	63.73
VA	62,660	805	77.84
FmHA	56	1	56.00
TOTAL	544,103	8,306	65.51

Of these loans, the banking institution either took, or experienced, one of six alternative actions on the loan. These actions were:

- (1) Loan originated
- (2) Application approved but not accepted
- (3) Application denied by financial institution
- (4) Application withdrawn by applicant
- (5) File closed for incompleteness
- (6) Loan purchased by the institution

The first item indicates that the loan was made by the bank. The third item indicates that the loan was denied by the bank. Each of the others indicate different outcomes for the disposition of the loan. Item 2 indicates that the loan application was withdrawn by the applicant, but approved by the bank. Here, the applicant typically closes with a different institution offering better terms. For items four and five, the applicant withdrew for reasons unknown to the bank, or the bank closed the file due to incomplete information. Item six indicates that the bank purchased the mortgage on the secondary market. These loan records are likely duplicates. Table 13 indicates loans granted and denied applicants in Montana in 1994, by type of loan.

TABLE 13
MONTANA HOME MORTGAGE DISCLOSURE ACT DATA
APPLICATIONS FOR SINGLE FAMILY OWNER OCCUPIED HOME LOANS IN 1994

LOAN APPLICATION TYPE	ACTION TAKEN	TOTAL LOAN VALUE (\$1,000)	TOTAL APPLICATIONS	AVERAGE LOAN SIZE (\$1,000)
Conventional	1	200,587	2,862	70.09
	2	17,630	434	40.62
	3	48,257	1,110	43.47
	4	23,652	328	72.11
	5	3,811	42	90.74
	6	43,746	469	93.28
FHA	1	78,462	1,224	64.1
	2	1,062	27	39.33
	3	8,416	155	54.3
	4	9,899	169	58.5
	5	336	5	67.2
	6	45,529	675	67.45
VA	1	31,659	418	75.74
	2	130	1	130.00
	3	3,554	48	74.04
	4	3,618	48	75.38
	5	253	3	84.33
	6	23,446	287	81.69
FmHA	1	0	0	na
	2	0	0	na
	3	56	1	56.00
	4	0	0	na
	5	0	0	na
	6	0	0	na
TOTAL		544,103	8,306	65.51

KEY FOR ACTION TAKEN:

1. Loan originated
2. Application approved but not accepted
3. Application denied by financial institution
4. Application withdrawn by applicant
5. File closed for incompleteness
6. Loan purchased by your institution

The data pertaining to just 'granted' or 'denied' loans was then tabulated by sex and again by race. The tabular data are presented below, in Tables 14 and 15. For both conventional and VA loans, females have a significantly higher denial rate than males, 33 versus 26 percent for conventional loans, and 15 versus 9 for the VA, respectively. For FHA loans, males have a higher denial rate than females, but the 11 versus 9 is not as pronounced as the other loan types.

TABLE 14
MONTANA HOME MORTGAGE DISCLOSURE ACT DATA
PERCENT OF SINGLE FAMILY OWNER OCCUPIED HOME LOANS DENIED IN 1994
LOAN APPLICATIONS BY SEX

TYPE	SEX	TOTAL	DENIED	GRANTED	% DENIED
Conventional	Male	3,053	797	2,256	26.11
	Female	807	268	539	33.21
	Not Provided	104	42	62	40.38
	NA	8	3	5	37.50
Subtotal		3,972	1,110	2,862	27.95
FHA	Male	1,026	122	904	11.89
	Female	349	32	317	9.17
	Not Provided	4	1	3	25.00
	NA	0	0	0	NA
Subtotal		1,379	155	1,224	11.24
VA	Male	422	41	381	9.72
	Female	33	5	28	15.15
	Not Provided	9	0	9	0.00
	NA	2	2	0	100.00
Subtotal		466	48	418	10.30
FmHA	Male	0	0	0	NA
	Female	1	1	0	100.00
	Not Provided	0	0	0	NA
	NA	0	0	0	NA
Subtotal		1	1	0	100.00
TOTAL		5,818	1,314	4,504	22.59

** "Not Provided" by the applicant during written or telephone interview

Loan denial rates for minority races were also computed by type of loan program. The Native Americans had vastly higher denial rates than any other race, about 46 percent. However, all races were substantially higher than whites, which had a denial rate of 27 percent. However, some of the denial rates were computed on small populations, such as the Asian or Black; therefore direct causal relationships are less reliable to make. For FHA loans, all races experienced a lower denial rate, but Native Americans had only a 5 percent denial rate. This is a significant change from the conventional loan activity. Insufficient non-white loan denials were made to infer any conclusions about the VA loan program.

TABLE 15
MONTANA HOME MORTGAGE DISCLOSURE ACT DATA
PERCENT OF SINGLE FAMILY OWNER OCCUPIED HOME LOANS DENIED IN 1994
LOAN APPLICATIONS BY RACE

LOAN TYPE	RACE	TOTAL	DENIED	GRANTED	% DENIED
Conventional	American Indian or Alaskan Native	73	34	39	46.58
	Asian or Pacific Islander	17	5	12	29.41
	Black	6	2	4	33.33
	Hispanic	48	16	32	33.33
	White	3,605	979	2,626	27.16
	Other	19	9	10	47.37
	Not provided by applicant	196	62	134	31.63
	NA	8	3	5	37.50
Subtotal		3,972	1,110	2,862	27.95
FHA	American Indian or Alaskan Native	18	1	17	5.56
	Asian or Pacific Islander	5	1	4	20.00
	Black	2	0	2	0.00
	Hispanic	26	7	19	26.92
	White	1,315	143	1,172	10.87
	Other	1	1	0	100.00
	Not provided by applicant	9	2	7	22.22
	NA	3	0	3	0.00
Subtotal		1,379	155	1,224	11.24
VA	American Indian or Alaskan Native	4	0	4	0.00
	Asian or Pacific Islander	2	0	2	0.00
	Black	3	0	3	0.00
	Hispanic	7	1	6	14.29
	White	436	45	391	10.32
	Other	0	0	0	NA
	Not provided by applicant	12	0	12	0.00
	NA	2	2	0	100.00
Subtotal		466	48	418	10.30
FmHA	American Indian or Alaskan Native	0	0	0	NA
	Asian or Pacific Islander	0	0	0	NA
	Black	0	0	0	NA
	Hispanic	0	0	0	NA
	White	1	1	0	100.00
	Other	0	0	0	NA
	Not provided by applicant	0	0	0	NA
	NA	0	0	0	NA
Subtotal		2	2	0	100.00
TOTAL		5,818	1,314	4,504	22.59

Therefore, it is reasonable to say that non-whites, and especially Native Americans, had significantly higher denial rates than whites when applying for conventional loans. Also, females tend to have a higher denial rate for conventional and VA loans than males.

This particular set of denial data was also inspected further. A review of the HMDA denial reasons for each of the denied codes also occurred. Tables 16 and 17 present the primary denial codes by race and sex. In both cases, almost 70 percent of the time the denial reason pertained to insufficient income for the proposed debt to income ratio. In effect, the applicant earned insufficient income to make the prospective loan payments. However, a poor employment history and lack of sufficient collateral were cited about 10 percent of the time.

Rather than indicating that there is discrimination in the lending marketplace, this tends to more definitively identify the degree to which the protected classes tend to have lower incomes. However, these low income difficulties could be mitigated by the availability of lower interest loans.

TABLE 16
MONTANA HOME MORTGAGE DISCLOSURE ACT DATA
PRIMARY REASON FOR SINGLE FAMILY OWNER OCCUPIED HOME LOANS DENIED IN 1994
LOAN APPLICATIONS, BY RACE

PRIMARY REASON FOR LOAN DENIAL, BY CODE											
RACE	1	2	3	4	5	6	7	8	9	10	TOTAL
1	25	2	1	4	1	1	1				35
2	3	2								1	6
3	2										2
4	10	6		3	1			1		3	24
5	812	119	31	104	25	16	7	10	1	43	1,168
6	9	1									10
7	30	12	1	11	5	1				4	64
8		1		3	1						5
T	891	143	33	125	33	18	8	11	1	51	1,314

RACE	AVERAGE DENIAL RATE BY RACE AND REASON										% DENIED
1	71.43	5.71	2.86	11.43	2.86	2.86	2.86	0.00	0.00	0.00	2.66
2	50.00	33.33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16.67	0.46
3	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.15
4	41.67	25.00	0.00	12.50	4.17	0.00	0.00	4.17	0.00	12.50	1.83
5	69.52	10.19	2.65	8.90	2.14	1.37	0.60	0.86	0.09	3.68	88.89
6	90.00	10.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.76
7	46.88	18.75	1.56	17.19	7.81	1.56	0.00	0.00	0.00	6.25	4.87
8	0.00	20.00	0.00	60.00	20.00	0.00	0.00	0.00	0.00	0.00	0.38
T	67.81	10.88	2.51	9.51	2.51	1.37	0.61	0.84	0.08	3.88	100.00

KEY: RACE 1: American Indian or Alaskan Native
 2: Asian or Pacific Islander
 3: Black
 4: Hispanic
 5: White
 6: Other
 7: Information not provided by applicant
 8: Not available

DENIAL 1: Debt-to-income ratio
 2: Employment history
 3: Credit History
 4: Collateral
 5: Insufficient cash (down payment, closing cost)
 6: Unverifiable information
 7: Credit application incomplete
 8: Mortgage insurance denied
 9: Other
 10: Not available

TABLE 17
MONTANA HOME MORTGAGE DISCLOSURE ACT DATA
PRIMARY REASON FOR SINGLE FAMILY OWNER OCCUPIED HOME LOANS DENIED IN 1994
LOAN APPLICATIONS BY SEX

PRIMARY REASON FOR LOAN DENIAL, BY CODE											
SEX	1	2	3	4	5	6	7	8	9	10	TOTAL
1	653	99	29	90	22	11	6	8	1	41	960
2	220	34	3	23	7	6	2	3		8	306
3	18	9	1	9	3	1				2	43
4		1		3	1						5
T	891	143	33	125	33	18	8	11	1	51	1,314

SEX	AVERAGE DENIAL RATE BY SEX AND REASON										% DENIED
1	68.02	10.31	3.02	9.38	2.29	1.15	0.63	0.83	0.10	4.27	73.06
2	71.90	11.11	0.98	7.52	2.29	1.96	0.65	0.98	0.00	2.61	23.29
3	41.86	20.93	2.33	20.93	6.98	2.33	0.00	0.00	0.00	4.65	3.27
4	0.00	20.00	0.00	60.00	20.00	0.00	0.00	0.00	0.00	0.00	0.38
T	67.81	10.88	2.51	9.51	2.51	1.37	0.61	0.84	0.08	3.88	100.00

KEY: SEX1: Male
2: Female
3: Information not provided by applicant
4: Not available

DENIAL 1: Debt-to-income ratio
2: Employment history
3: Credit History
4: Collateral
5: Insufficient cash (down payment, closing cost)
6: Unverifiable information
7: Credit application incomplete
8: Mortgage insurance denied
9: Other
10: Not available

PUBLIC AND ADMINISTRATIVE POLICIES AND ACTIONS

According to HUD guidelines, the Analysis of Impediments should include a review of “possible actions or admissions in the public sector (including public housing, community development, transportation, and community services) that may affect housing choice.” This examination may include building, occupancy, and health and safety codes; site selection for the construction of public and private housing including zoning, lot sizes, and provision of essential services; demolition, displacement of residents and businesses; and other related areas. Survey results indicated two primary areas of concern in the State of Montana related to public policy: occupancy standards and exterior access for people with disabilities.

Occupancy standards are an ongoing issue for landlords and property managers in many states and communities, particularly as this is an area that can generate housing complaints based on familial status, or in some cases, on national origin. Landlords complain that occupancy standards are unclear, thus leaving decisions about occupancy limits to their discretion. Different cultures may have differing standards of how to live and how many people live together, complicating the issue. This policy generated a moderate response from survey participants.

An area of greater concern is related to external access around buildings and dwellings. The Montana Governor's Advisory Council on Disability was formed in June 1994 by an executive order of Governor Marc Racicot. The council was charged with recommending steps to promote the implementation of the Americans with Disabilities Act in Montana state government. In its final report completed in August 1996, the council listed four findings, including a recommendation to expand the authority of the Building Codes Bureau to enforce standards directed toward the construction of exterior parking and walkways around new construction or extensive renovation projects.

Current Montana law does not require building code inspectors to inspect parking areas and pathways to the entrances of buildings. While new buildings are being constructed in compliance with federal accessibility standards, they are only accessible from the entranceway inward. The building codes do require the inspection of buildings from the entranceway inward. Therefore, people with disabilities may have difficulties getting to a building that may be handicapped accessible on the inside. Survey responses indicate that this problem can be construed as an impediment to fair housing.

To illustrate this problem, consider a new 95-unit housing development in Missoula. According to federal law, all ground floor units must be constructed to be handicapped accessible. In this development, about half the ground floor units included accessibility features like wider hallways and doorways. However, units that are accessible inside have two steps leading to the front door. Advocates for the disabled and fair housing are currently working with the project developers to remedy the problem.

Legislation was drafted earlier this year that would "expand provisions of the state's building construction standards by authorizing the Department of Commerce, and requiring certified municipal building code enforcement units, to enforce handicapped accessibility standards with regard to private sidewalks and private parking areas." However, the governor declined to sponsor the legislation, citing budgetary constraints.

The Coalition of Montanans Concerned with Disabilities in October of this year held a series of educational forums on the proposed changes to the state's building codes. Disabled advocates would like to generate interest in the proposed legislation in the construction trades, with the hope that the industry could sponsor the bill. Builders are in a position of significant liability for failing to construct accessible exterior features because the federal laws require structures to be accessible.

OUTREACH, EDUCATION, TESTING AND ENFORCEMENT

Outreach and Education

Several organizations in the state including the Human Rights Commission, fair housing organizations, the Montana Board of Housing, landlord associations, Realtor boards and others provide fair housing education around the state. There is, however, a perception that the education is not reaching those who need to hear it and that there is a lack of coordination with local landlord associations and Realtor boards.

There also is a perception that there is a need to educate landlords who are owner/operators about fair housing law.

Testing and enforcement

Random Testing: Some fair housing advocates strongly support use of “random testing” as a means to measure the extent of housing discrimination. However, the survey also found strong criticism of such a practice. Some respondents viewed the use of such an approach as “sting tactics” that expose landlords, real estate agents, and others who may be acting unwittingly, and not fully apprised of fair housing laws. This then fosters a “hateful” attitude toward fair housing and the fair housing community, rather than a positive respect for fair housing practices and activities.

Programmatic testing: Others suggested that it would behoove property management firms to hire testers to test on-site managers. Testing managers in this manner would provide an opportunity for fair housing education, or bring to light a “bad” manager whose illegal actions expose the property management company to potential liability and litigation.

Complaint-based testing: After receipt of a housing complaint, a test is often conducted to evaluate the validity of the alleged fair housing violation. This practice is seen as a valid way to determine cause and can further substantiate administrative or legal proceedings, if required.

Enforcement: Once a test has been completed, and a cause for a fair housing violation has occurred, mediation or other approach to settlement or resolution of the incident can occur more smoothly.

Summary of Impediments to Fair Housing Choice

The rental market remains the area that generates the greatest number of complaints of housing discrimination. This occurs in a variety of ways as summarized below:

Different terms and conditions for rental: Survey responses and complaint research conducted for this report determined that a key problem area in housing discrimination relates to varying terms and conditions for members of protected classes. This includes practices that impose different requirements on members of protected classes, such as requiring employment history from a Native American but not a white applicant. Another example of this practice is a

landlord who shows a single person three different apartments, but only shows a mother with children one unit.

Disparate treatment in rental property: This category refers to patterns of discriminatory behavior that are much harsher than “different terms and conditions,” and which typically take place after rental has occurred. Activities such as racial intimidation, sexual harassment, or verbal abuse would fall into this area, as would segregation or widely different rates of rent.

Discriminatory advertising in sale or rental of property: There has been a problem with discriminatory classified advertising in Montana. The HRC is currently involved in a research project looking for patterns and practice of discrimination against families with children in the state’s four major housing markets. The study includes a periodic review of classified newspaper advertising for discriminatory ads.

Restrictive covenants in sale of property: Illegal covenants restricting who may purchase property is an area of concern in the State of Montana. A study by the HRC found at least one restrictive covenant banning the sale of property to members of a particular Indian tribe and other covenants banning property sales to people with children.

Institutional obstacles in lending: Meeting the lending needs of Native Americans in and around reservations is an ongoing area of concern in Montana. More than one bank in the state has received a less than satisfactory Community Reinvestment Act (CRA) audit for failing to meet the banking needs of minority citizens or redlining activities. These incidents have occurred in banks near Indian reservations. There are some institutional obstacles relating to property ownership that banks must overcome to successfully lend on tribal trust lands. A group of bankers and tribal representatives are currently working to draft a set of uniform business codes for use on reservations. Organizers are hopeful that each tribe can adopt the business codes and thereby facilitate lending activities on the reservations. Furthermore, vastly differing denial rates for non-whites and females, as determined by analysis of HMDA data, infer, but do not conclude, structural differences in the review of applications.

ASSESSMENT OF PUBLIC AND PRIVATE FAIR HOUSING PROGRAMS

Montana Human Rights Commission

The commission enforces federal and state laws within the State of Montana that prohibit discrimination based on the protected classes. Filing a complaint before the HRC is the first step in the process. The commission conducts impartial investigations of the complaint and attempts an early resolution of the case. The commission is authorized to conciliate complaints when substantial evidence exists to document that discrimination has occurred.

A complaint may be filed within one year of the date the alleged discrimination occurred. Referrals are made to the commission from a variety of sources including fair housing groups, private attorneys, state agencies, as well as from HUD and the Equal Opportunity Employment Commission. Initial contact is made with the agency through telephone or written inquiry. An intake officer conducts an interview, and if it is determined that there is a basis, a complaint is prepared and mailed to the complainant for signature.

The Montana Human Rights Commission may be reached at:

616 Helena Avenue, Suite 302
Steamboat Block
P.O. Box 1728
Helena, Montana 59624-1724
(406)444-2884

Fair Housing Initiative Programs

The Department of Housing and Urban Development established the Fair Housing Initiatives Program (FHIP) in 1987 as a demonstration program aimed at strengthening the agency's enforcement of the Fair Housing Act. The Housing and Community Development Act of 1992 established FHIP as a permanent program HUD provides funding for programs that provide services supporting fair housing such as education, outreach, and testing.

In Montana, two programs receive FHIP funding: the Council for Concerned Citizens in Great Falls, Bozeman, Havre, and Billings, and Montana Fair Housing in Missoula.

Council for Concerned Citizens **[DISSOLVED MARCH 13, 1997]**

The Council for Concerned Citizens (CCC) is a full service fair housing organization. CCC provides fair housing services statewide and has offices in Great Falls, Billings, Havre and Bozeman. Much of the agency's work has been focused on discrimination against Native Americans.

The CCC may be reached at:

Billings office

15 North 26th, Suite 206
P.O. Box 2021
Billings, MT 59101
(406)256-9988

Great Falls office

409 14th Street, S.W.
Suite 1
Great Falls, MT 59404
(406)727-9136

Montana Fair Housing

Montana Fair Housing (MFH), based in Missoula, has provided fair housing services in western Montana since 1988. Recently, MFH has been pursuing complaints on a statewide basis and hopes to expand to include an office in Billings in the next year.

Montana Fair Housing is a full-service fair housing organization,¹⁹ doing complaint intake, investigations, and litigation for all protections offered by federal and state fair housing laws including lending, insurance, sales, and rentals. In addition, full-service agencies must also provide outreach and education, and have a record of meritorious complaints.

Montana Fair Housing may be reached at:

904-A Kensington Avenue
Missoula, MT 59801
(406)542-2611

COMPLETED STUDIES

Equal Housing Opportunity in Montana? A Study of Housing Discrimination for Governor Stan Stephens and The Montana Human Rights Commission

Governor Stan Stephens by executive order in May 1991 established a nine-member Advisory Council on Housing Discrimination to investigate housing discrimination across the state. The council conducted community forums in 10 cities—Wolf Point, Glendive, Kalispell, Polson, Missoula, Great Falls, Havre, Cut Bank, Hardin, and Billings. During the forums, the advisory council heard 35 hours of testimony by more than 90 people on the issue of housing discrimination and its effect on their communities.

The council issued its report *Equal Housing Opportunity in Montana? A Study of Housing Discrimination for Governor Stan Stephens and The Montana Human Rights Commission* in January 1992. The council found that illegal housing discrimination is a serious problem throughout Montana that adversely effects all of its residents and the health and vitality of its

¹⁹ Telephone conversation with Toni Austad, Council for Concerned Citizens, September 3, 1996.

communities.²⁰ In its report to the governor, the council made several recommendations including increased education about fair housing, enhanced enforcement activities, and annual assurances from state agencies of compliance with fair housing laws.

Following the work of the advisory council, housing discrimination complaints received at the HRC jumped more than 100 percent, from 66 complaints in 1991 to 134 complaints in 1992. In 1993 the commission received 140 housing complaints, although the number dropped to 65 in 1994. The rise in complaint filings may be attributed to increased awareness of the issues of housing discrimination as a result of the work of the advisory council.²¹

Investigating Systemic Discrimination Against American Indians

The HRC, funded through a grant with the U.S. Department of Housing and Urban Development, completed a study of systemic discrimination in against American Indians in December 1994. The study focused on discrimination in real estate and banking practices affecting American Indians in rural communities on or near the seven Indian reservations in Montana.

The investigative team examined Community Reinvestment Act (CRA) data to determine whether there were patterns of exclusion and examined lending practices in at least one bank in Cut Bank, Havre, Harlem, Wolf Point, and Hardin. The study also looked at real estate recording practices in Flathead, Lake, Glacier, Big Horn, and Roosevelt counties to identify covenants restricting the transfer of property to Indians. In addition, the study included an examination of 1992 and 1993 CRA and Home Mortgage Disclosure Act (HMDA) data of banks in the Billings area.

The study made a number of findings including that Indian home loan denial rates in rural areas are higher than the non-Indian denial rate and that the overall number of home loans on reservations is low. The study also noted barriers to banks lending money on the reservations including uncertainty about collecting on loans through tribal courts, difficulty obtaining adequate title insurance, inability to sell home loans on the secondary market, and the sovereign immunity of tribal governments.

Recommendations made in the study included further investigation to determine if disparities in loan approval rates were a result of unlawful discrimination and more education for financial institutions and federal agencies on lending money in Indian country.

²⁰ *EQUAL HOUSING OPPORTUNITY IN MONTANA? A Study of Housing Discrimination for Governor Stan Stephens and The Montana Human Rights Commission.* By the Montana Advisory Council on Housing Discrimination, January 1992

²¹ Telephone conversation attorney Tim Kelly, September 19, 1996

Administering and Enforcing Montana's Human Rights Laws. Wanted: A More Just, Effective, and Efficient Resolution on Cases and Complaints. A Report to the Governor and the 54th Legislature

Following a joint resolution of the 54th Legislature, the Montana Legislative Council in 1994 completed a report of the state's administrative system for enforcing human rights laws and alternative enforcement models. The study was authorized in an effort to determine what method of human rights law enforcement best meets the public policy goal of reduced discrimination. At the time the study was under taken, the average duration of a complaint through the hearing procedure to a final order was two years. The HRC at that time had nearly 700 unresolved cases in its inventory.

PROSPECTIVE ACTIONS FOR THE MONTANA DEPARTMENT OF COMMERCE

Impediments to fair housing exist in Montana, and they are faced by all protected classes, with varying degrees of frequency and severity. The Montana Department of Commerce carries the responsibility for certifying that HOME and CDBG grantees affirmatively further fair housing. The MDOC also is responsible for conducting the AI, taking actions to address the impediments, and monitoring the results. However, MDOC lacks the authority to solve these problems alone. The task of completely eliminating the impediments to fair housing belongs to all Montanans.

To facilitate Montana's collective responsibility, the Montana Department of Commerce will:

- Provide referral to the Human Rights Commission and, hereby, endorses the Commission's complaint-based system;
- Endorse a statewide dialogue between key parties in the fair housing arena, such as real estate groups, landlord and property management associations, fair housing advocates, and interested citizens;
- Provide information to organizations in Montana, such as realty groups, landlord associations, and the Montana Newspaper Publishers Association, about liabilities associated with discriminatory advertising practices in housing;
- Continue to provide fair housing education in MDOC programs, and inform individuals and relevant groups of fair housing education opportunities;
- Continue to consider the results or implications of data and various studies, such as the Home Mortgage Disclosure Act information, the Human Rights Commission complaint data base, and fair housing organizations' Fair Housing Initiative Program reports;
- Continue to monitor fair housing compliance in grantee projects; and
- Continue to authorize grantee administrative funds for HOME and CDBG grantees to conduct activities that affirmatively further fair housing.

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APPENDIX A A HISTORY OF FAIR HOUSING LAWS

- 1865: 13th Amendment:** Abolished slavery and all the "incidents and badges of slavery". The South responded with the Black Codes to regulate the legal and employment status of Black Americans.
- 1866: Civil Rights Act, 42 U.S.C. 81982:** All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold and convey real and personal property.
- 1868: 14th Amendment:** Due process and equal protection of the law.
- 1883: Civil Rights Case 109 U.S. 3 (1883):** U.S. Supreme Court held that the 13th amendment did not prohibit private acts of discrimination.
- 1896: Plessey v. Ferguson 163 U.S. 537 (1896):** Doctrine of "separate but equal" established effectively institutionalizing segregation in the Unites States.
- 1917: Buchanan v. Warley 245 U.S. 60:** Racial zoning declared unconstitutional.
- 1924: Indian Citizenship Act:** American Indians granted citizenship.
- 1948: Shelley v. Kramer 334 U.S. 1:** State courts could not enforce restrictive covenants on the basis of race, religion, or national origin.
- Hur v. Hodge 334 U.S. 23:** Same constraints on federal courts concerning restrictive covenants.
- 1949: 42 U.S.C. 51441:** Congress set a national goal of a decent home and suitable living environment for every American family.
- 1954: Brown v. Board of Education of Topeka 344 U.S.C. 1(1954)** Reversed the doctrine of separate but equal.
- 1962: Executive Order 11063 on Equal Housing Opportunity:** President Kennedy directed all federal departments and agencies having programs and activities related to housing and urban development to eliminate racial discrimination in federally assisted housing.
- 1964: Title VI of the Civil Rights Act:** Prohibiting discrimination in programs or activities receiving federal financial assistance.
- 1968: Jones v. Alfred Mayer Co., 292 U.S. 409, 1 EOH SI3,011 (1968):** Racial discrimination in housing is one of the "badges and incidents of slavery."
- Federal Fair Housing Act April, 1968:** Illegal to discriminate in the area of housing because of a person's race, color, religion, and national origin.
- Newbern v. Lake Lorelie. Inc., 308 F.Supp. (S.D. Ohio 1968):** The use of testers was upheld. A tester does not engage in entrapment if all that is offered is a "favorable opportunity" to discriminate.
- 1972: U.S. Supreme Court** decides that recording restrictive deeds violates the 5th Amendment and the Fair Housing Act of 1968.
- 1972: U.S. v. Hunter, 459 F. 2d 205 (4th Cir.), cert. denied, 409 U.S. 934 (1972):**
(1) applies to newspapers and other media that carry discriminatory advertising even though someone else drafted and placed the ad;

(2) applying fair housing law to advertising does not violate the first amendment's freedom of speech;
(3) whether a particular ad violates fair housing law is determined by how an ordinary reader would naturally interpret the ad.

1973: Rehabilitation Act of 1973, Section 504: No otherwise qualified individual with handicaps in the United States, as defined in Section 706(8) of this title shall, solely by reason of his/her handicap, be excluded from the participation, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive Agency or by the United States Postal Service.

1974: Montana Human Rights Act: Protected people with disabilities and protected people based on their age.

Federal Fair Housing Act amended to include sex as a protected class.

Equal Opportunity Credit Act passed as amendments to Title VIII of the Consumer Credit Protection Act prohibiting creditors from discriminating in consumer credit transactions. In 1976, the range of protection was expanded to include race, color, national origin, religion, age, receipt of public benefits, but not familial status or disability. It covers all aspects of a credit transaction and requires creditors to notify rejected applicants of the reasons of an adverse action against them. It requires every lender, upon request, to provide a copy of the appraisal report prepared as part of the loan application process.

1975: Home Mortgage Disclosure Act: requires most lenders to annually disclose information about their residential mortgage lending activities. HMDA is the principal tool used for evaluating lender performance under CRA..

1975: Zuch v Hussey, 394 F.Supp 553 1028, 1 EOH S13,706 (1975) Evidence gathered as a result of testing may be the only competent evidence available to prove that the defendants engaged in unlawful conduct. (Blockbusting).

1977: Community Reinvestment Act: designed to combat the practice of redlining. It requires financial institutions to "serve the convenience and needs of the communities in which they are chartered to do business," including low and moderate-income neighborhoods.

1980: Executive Order 12259 by President Carter: establishment of the President's Committee on Equal Opportunity in Housing.

1982: Havens Realty Corporation v. Coleman, 455 U.S. 372 (1982): U.S. Supreme Court affirmed the standing of a minority tester and fair housing organizations to sue on their own behalf under Title VIII of the Civil Rights Act of 1968.

1983: Shellhammer v. Lewallen (W.D. Ohio Nov. 22, 1983) 4 Eq. Opportunity in Hous. Rep. (P-H) par. 15,472; aff'd without published opinion (6th Cir. 1985) 770 F.2d 167: A federal court held that the sex discrimination prohibition of the federal fair housing act applies to sexual harassment in housing.

1987: Housing and Community Development Act: Authorized HUD Fair Housing Initiatives Program and federal funding of private fair housing groups for complaint-based testing.

1988: 1968 Fair Housing Act amended: To include families with children and people with disabilities; also included stronger enforcement provisions.

1991: Montana Human Rights Act M.C.A. 49-2-305 amended: To include marital status; amended to become substantially equivalent with Federal Fair Housing Act.

Montana Human Rights Act amended to include marital status and to become substantially equivalent with the Federal Fair Housing Act.

1994: **Executive Order** by President Clinton commits all executive agencies of the federal government for the first time to affirmative implementation of fair housing laws; expands Executive Order 11063 to protect persons who are disabled and to families with children. The Executive Order also creates a President's Fair Housing Council comprised of Cabinet-level representatives.

APPENDIX B
SURVEY LETTER
AND
ATTACHMENT

Dear :

The state of Montana is conducting a study related to fair housing compliance and housing discrimination. The study, the Analysis of Impediments, is required by the Department of Housing and Urban Development for states and communities that receive federal money for housing and community development. Its goal is to identify discriminatory practices and policies in a variety of areas including housing rentals and sales; banking, insurance and real estate industries; and public and administrative policies that may inadvertently lead to discrimination against protected classes.

The study will look at several areas including mortgage application data, fair housing complaints, and media reports. It will also include telephone interviews with people who are familiar with housing and fair housing compliance issues, people like you.

Ms. Cathleen Massier of Western Economic Services (WES) will contact you by telephone in the next week or two to schedule a time that is convenient for me to interview you. The interview will take about 15 minutes and will be related to impediments to fair housing choice in the state of Montana or individual communities. Attached to this letter is a list of the areas that will be examined in the study, covering both private and public sectors. Input related to any of these areas will be valuable to the process.

Comments gathered in this telephone survey will be combined in a single narrative for inclusion in the Analysis of Impediments. Responses will not be attributed to individuals; your comments will remain anonymous.

We need your viewpoint and value the expertise you offer. I understand that you are very busy with other things, and I hope you'll have the time to participate in this important study.

Thank you for your time and help.

ANALYSIS OF IMPEDIMENTS GENERAL AREAS OF REVIEW

Private Sector

- ▶ Activities of agencies and individuals pertaining to the financing/refinancing, sale, purchase, rehabilitation, and rental of housing that may affect the achievement of fair housing choice within the state. This may also include influences of state banking and insurance laws and regulations.
- ▶ Actions of state and local government, agencies and individuals in regard to the sale of housing, such as steering or blockbusting, deed restrictions, and discriminatory housing brokerage services occurring within the state. This may also include the influence of state laws and regulations.
- ▶ State and local laws, regulations, or administrative rules covering housing rentals, trust or lease provisions, and conversions of apartments to all adults.
- ▶ Availability and dissemination of information on programs that may be used to provide financial assistance for modification to privately owned housing to make such housing accessible to persons with disabilities and their families.

Public Sector

- ▶ State building, occupancy, health and safety codes (including accessible design) that may affect the availability of housing for minorities, families with children, and people with disabilities.
- ▶ Statewide planning, financing, and administrative actions related to the provision and siting of public transportation and supportive social services that may inhibit or concentrate affordable housing opportunities for people with disabilities.

